



Corte Interamericana  
de Derechos Humanos  
Inter American Court of Human Rights

## Implementing social rights: lessons learned

### *First dialogue between the European Committee of Social Rights and the Inter-American Court*

Diplomatic School of Madrid  
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CONCEPT PAPER

The conference will be a first, bringing together the Inter-American Court of Human Rights (IACHR) and the European Committee of Social Rights (ECSR).

Over the years, the ECSR has generated a significant body of case law in the area of social rights and based on the European Social Charter (ESC). The IACHR has started developing—vigorously—new case law under Article 26 of the American Convention on Human Rights provision on progressive development towards the full realisation of social rights. The Court is also competent to hear cases of alleged violation of rights in respect of trade unions and education under the Protocol of San Salvador.

The floodgates are open, cases trickle, hopes are high, social rights progress but also, sometimes, regress. Looking back and looking forward, this event offers the opportunity for key actors in the area of social rights to engage in an exploratory journey towards the effective implementation of rights that are well established in international law.

*Thematic axes/panels for discussion:*

TABLE 1: *Why states have obligations in the area of social rights: the logic behind the need to comply, followed by who and what?*

- a. Defining the scope:
  - i. Personal scope
  - ii. Material scope
- b. The logic of social rights in practice: Specific examples

TABLE 2: *Justiciability* of social rights and their direct effect

- a. Challenges
- b. Practices
- c. Institutional views

TABLE 3: *Compliance*: mechanisms for ensuring implementation of social rights in practice

- a. Compliance at the International level:
  - i. The institutional framework for implementation
    - The role of the ECSR and the IACHR
    - The importance of governmental cooperation
  - ii. The role of social partners and civil society
- b. The tool of subsidiarity: the dialogue with domestic judges in social rights

CONCLUSIONS: The onward journey: enhancing social rights and preventing violations (the need for future ratifications and improving effectiveness at the national level) - the Spanish situation.

#### *Background information*

This first meeting or encounter follows several informal and formal meetings which took place in 2017 and 2018. In 2017, the President and Registrar of the IACHR visited the President and Secretariat of the ECSR. In 2018 a delegation from the IACHR (President, three Judges, Registrar and part of the Secretariat) were received by the President and one member of the ECSR and by the Secretariat of the Committee and had an exchange on recent case-law.

As a result of these meetings, two main lines of cooperation were agreed:

- To have a sustained exchange of recent case-law which could inform the mechanisms;
- To have a first open event in 2019, in order to broaden the discussion on ensuring respect for social rights.

Meetings and several exchanges with the UN Committee on Economic, Social and Cultural Rights (CESCR) have also taken place in the past and its case-law will be considered. The UN Protocol on individual complaints regarding the Covenant on Economic Social and Cultural Rights has opened a new global theatre for the CESCR to monitor compliance with social rights, and its case law is developing quickly.

#### ***Goals: what is to be done?***

There are three sets of goals for this conference:

- *Cross-fertilisation of International case law on social rights*: to create an actual forum for an exchange of case law, in order to allow for better cross-referencing and fostering real dialogue between the bodies specialised in social rights through:
  - o Better understanding of the existing case law;
  - o Better use of relevant examples - improving decision-making and the follow-up of decisions;

- More consistency, resulting in stronger decisions and in enhancing social rights protection;
  - Improved methods of interpretation.
- *Ensuring compliance:* to exchange information, in the light of the experience of ECSR, the IACHR and the different techniques used to:
- Mobilise Governmental mechanisms into action;
  - Ensure or promote judicial/legal follow-up (through promoting the compatibility between the Charter and domestic law;
  - Establish indicators to measure

The essential question or questions are: who isn't but should be listening and how to make them listen and do their duty? How to create the needed framework and institutional network to enhance, protect and ensure social rights in everyday life?

- *Promoting larger acceptance of social rights instruments:* the conference will also bring a special focus, through the participation of social partners and political parties, on the need for more ratifications. As regards the ESC, the desirability of ratifying the Revised Charter and the Protocol on Collective Complaints will be explored, with a focus on Spain. Madrid is an excellent choice of venue following the 2017 declaratory resolution, which was approved unanimously by all political parties in the Spanish Congress (Parliament's lower chamber), calling on the Government to take the necessary steps to ratify both the Revised Charter and the Protocol on Collective Complaints. In February 2019, the Government set in motion the process for the ratification of the Revised Charter and acceptance of all its provisions; however, the process was put on hold as a result of the dissolution of Parliament and the calling of early elections.